IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.8102 of 2004

Maharashtra Rashtra Bhasha Sabha,
Pune Petitioner

Vs.

S.R.Patil Respondent

Mr.M.V.Limaye for petitioner.
Mr.Nitin Deshpande for respondent.

CORAM: B.H.MARLAPALLE, J.

December 18, 2007.

ORAL JUDGMENT:

1. This petition filed under Article 227 of the Constitution impugns the judgment and order dated 7/5/2004 rendered by the learned Judge of the Labour Court at Pune thereby allowing Application (IDA) No.41 of 1993 under Section 33C(2) of the Industrial Disputes Act, 1947 (for short "the I.D. Act"). By the said order the petitioner - Sabha has been directed to pay an amount of Rs. 1,72,354/- towards the legal dues accrued to the respondent - employee for the period from 1979-80 to 1992-93 by way of salary, bonus, PF contribution and leave encashment etc. The respondent had stated that he was not paid his salary prior to the termination of his service on

1/6/1984 and the said termination was illegal which he challenged in Complaint (ULP) No. 43 of 1984. The 2nd Labour Court at Pune was pleased to allow the said complaint on 18/11/1985 and he was directed to be reinstated and to pay full backwages from 1/6/1984. Consequently he was reinstated and paid the backwages. He was on duty till the end of December 1985 but from January 1986 he was not allowed to report for duty and was not paid salary from January 1986. He further stated that on 8/7/1991 the Industrial Tribunal passed an award on the charter of demands and as per the said award passed in Reference (IT) No.584 and Reference (IT) No.20 of 1982, he was not given any additional benefits. This application was filed on or about 5/7/1993 and the respondent claimed the following recoveries:

(a) Arrears in salary from April 1979 to June 1993	Rs. 1,38,688.50
(b) Bonus payable during the period from 1979-80 to 1993-94	Rs. 14,885.00
(c) Provident Fund contribution from from 1979-80 to 1992-93	Rs. 3,830.50

(d) Leave encashment during the period from 1979-80 to 1993-94	Rs. 14,800.00
(e) Illegal deductions from salary	Rs. 150.00
Total	Rs. 1,72,354

2. The petitioner - Sabha had appeared before the Labour Court after receiving the notice and opposed the application. It claimed that the applicant did not report to duty from January 1986 onwards and he had himself abandoned the service. He was making all false allegations and was resorting to filing of frivolous cases including criminal complaints. The applicant had examined himself at Exhibit 9 whereas the Sabha had filed the affidavit of Shri Shashikant Joshi as CW 1. Omkar Deshmukh was examined as CW 2 and Vikram Kore was examined as CW 3. It has also come on record that the employer had filed Complaint (ULP) No.616 of 1990 seeking a declaration and injunction against the employee-applicant. The Labour Court held that the evidence of the Sabha did not support its case and on the other hand the applicant was successful in proving that he was not allowed to report for duty. He was not paid the salary or difference in salary and other legal

benefits. The Court also noted that the Sabha failed to submit documentary proof like attendance record, muster roll and salary slips etc.

3. Mr. Limaye the learned counsel for the petitioner-Sabha referred to the admissions of the applicant in his cross-examination before the Labour Court stating the applicant had received salary upto December, 1990, he did not have the grievance about the salary upto December, 1990 and his grievance was not from January 1991 and his grievance was that he was neither paid salary nor it was drawn from January 1991. He further stated that he had received salary upto December, 1990 without work. As per Mr. Limaye when admittedly the salary upto December, 1990 was paid and when the workman had no grievance it was not permissible for the Labour Court to entertain the recovery application from the year 1979-80 to December, 1990 and if so considered then the only claim that remains is for the period from January 1991 and which is about Rs.35,000/-. It was also submitted by Mr.Limaye that after December, 1990 the workman himself had abandoned the service and, therefore, he could not have claimed any salary as salary payment is due only for the work done on

attending the office.

4. As noted earlier, in the application itself the workman had admitted that he was reinstated pursuant to the order passed by the Labour Court on 18/11/1985 and the amount of backwages were also paid to him. He was on duty in December, 1985 and he had received the salary but from January 1986 he was not paid the salary. In the witness box the workman admitted that he had received his salary till December, 1990. On the backdrop of these admissions, the submissions made by Mr.Limaye appeared to be very impressive but on a close scrutiny it appears to be otherwise. It was a specific case of the applicant-workman that two different References, namely, Reference (IT) No.20/82 and Reference (IT) No.5/84 came to be decided by the Industrial Tribunal in the year 1991 and the emoluments payable to the workmen were revised from the date the charter demand was submitted or the earlier settlement had expired. The workman in his examination-in-chief before the Labour Court, therefore, claimed that the dues payable to him as per this award passed in both the references were not paid to him by way of arrears and, therefore, the Tabular statement filed along

with the application showing the difference of salary that was required to be paid to him on implementation of the said award. On the point of abandonment of service from January 1991 onwards, it needs to be noted that the petitioner - Management itself has filed Complaint (ULP) No. 616 of 1990 and surprisingly it has prayed for declaration that the applicant had left his job voluntarily. The said complaint was dismissed in default. The Labour Court, therefore, noted that when the employer itself had sought a declaration by filing a complaint for unfair labour practice against the workman and the said complaint was dismissed in default, the management could not claim that the applicant had voluntarily abandoned his service from January, 1991 and, therefore, he was not entitled to claim any salary from that month onwards.

5. However, for the first time by way of an affidavit submitted in this petition, the applicant - workman has attempted to substantiate his claim on the basis of the award in Reference (IT) No.20/82 and Reference (IT) No.5/84. This attempt to provide the quantification of the claim made for each year ought to have been done before the Labour Court while the

applicant was in the witness box or any other witness from either of the side was in the witness box. It was necessary for the Labour Court to refer to the awards passed and record as to how the basic salary, DA, HRA, CCA and Bonus etc. had gone up pursuant to the two awards referred to hereinabove. The Labour Court has mechanically accepted the claim made by the workman and this cannot be allowed. It would be necessary for the applicant to re-enter the witness box and furnish the details of all the monetary claim made from 1979-80 onwards and may be on the basis of the above mentioned awards. To that extent the impugned order suffers from serious infirmities and renders unsustainable.

6. Hence, the petition succeeds partly. Impugned order passed by the Labour Court dated 7/5/2004 in Application (IDA) No. 41 of 1993 is hereby quashed and set aside and the application is restored to the file of the Labour Court. The parties are at liberty to adduce additional evidence in support of the quantification of the claim in terms of the tabular statement attached to the application. On remand, the application be heard and decided as expeditiously as possible and preferably within a period of six

months from the date of receipt of the writ of this court. The applicant-workman shall adduce additional evidence so as to prove the quantification of the claim made by him and as set out in the schedule to the application. Rule is made absolute accordingly.

. The amount deposited shall stand transferred to the Labour Court and it shall be subject to the decision on remand.

(B.H.MARL